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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.702 OF 2023

Paromita Purthan Petitioner.

Vs.

Municipal Corporation of Gr.
Mumbai & Ors. Respondents.

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Mr. Nishad Nevgi, a/w Ms Anjalli Malekar i/b Ms Samaa Shah, for the
Petitioner.

Ms Pooja Yadav, for MCGM.

Mr Manish Upadhye, AGP for State.

Ms Vibha Mishra, for Respondent No.7.

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CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.

DATE : 27th MARCH, 2023.

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P.C. :

1. The petitioner is a animal lover, who is taking care of stray dogs, stated to be 18 in number. These dogs have territorial affinity to the area of the petitioner's cooperative housing society namely

the RNA Royale Park Cooperative Housing Society Limited, Maharashtra Nagar, Kandivali West, Mumbai (for short '**the Society**').

2. Grievance of the petitioner is of cruelty being caused to the dogs, on account of the management of the Society, not permitting the petitioner to feed these dogs and to care for their requirements including providing water. The grievance is, also, that a designated area for feeding the dogs is not being provided by the society. It is stated that the Petitioner is compelled to feed the dogs at the gate of the society making these animals vulnerable to road accidents in which the animals are likely to die. It is submitted that a designated feeding place is required to be provided inside the premises of the society, when the land including that of the neighbouring societies is about 15 acres, although Respondent/Society has only 3 buildings.

3. Petitioner has brought to the notice of this Court a resolution passed by the Society on 13th November 2022, (**Exhibit 'N'**), which is to the effect that, while discussing an agenda on the

issue of stray dogs, the Managing Committee has passed such resolution to hire ‘bouncers’ to protect the residents and stop the feeders from feeding the dogs. Although the resolution records that feeding of the dogs would be at an allotted space, however, learned Counsel for the Respondent/Society is unable to point out that any specific area within the large premises of the society has been designated for feeding of these dogs.

4. The petitioner is before the court to submit that according to the resolution, bouncers as hired by the petitioner not only prevented the petitioner from feeding the dogs but also have personally harassed the petitioner from taking care of these stray animals, although this is being disputed by the Society.

5. Learned Counsel for the petitioner has also drawn our attention to the recent Rules notified by the Central Government namely, “The Animal Birth Control Rules, 2023” (for short ‘**2023 Rules**’), framed in exercise of powers conferred under Section 38 (1) and (2) and Clause (ea) of the Prevention of Cruelty to Animals Act, 1960, to submit that Rule 20 of such Rules, specifically

provides for feeding of community animals. This rule *inter alia* provides that it shall be the responsibility of the 'Resident Welfare Association' or 'Apartment Owner Association' of the area to make necessary arrangement for feeding of the community animals residing in the premises or the area involving the person residing in that area or premises, who feed those animals or intend to feed those animals and provide care to street animals as a compassionate gesture. The rule also provides to designate feed spots which are mutually agreed upon, keeping in mind the number of the dog population and their respective territories, and that the feeding spots shall be far from children play areas, entry and exit points, staircase or in an area which is likely to be least frequented by children and senior citizen. It also provides to designate the feeding time depending on the movement of children, senior citizens, sports which are likely to be least frequented by children and senior citizens and that designated feeders are allowed to volunteer for the vaccination, catching and release of dogs to assist with the Animal Birth Control Program.

6. For convenience, it would be appropriate to note the said Rule which reads thus:

20. Feeding of Community Animals :-

(1) It shall be responsibility of the Resident Welfare Association or Apartment Owner Association or Local Body's representative of that area to make necessary arrangement for feeding of community animals residing in the premises or that area involving the person residing in that area or premises, who feeds those animals or intends to feed those animals and provides care to street animals as a compassionate gesture.

(i) to designate feed spots which are mutually agreed upon, keeping in mind the number of dog population and their respective territories and the feeding spots shall be far from children play areas, entry and exit points, staircase or in an area which is likely to be least frequented by children and senior citizen.

(ii) to designate feeding time depending on the movement of children, senior citizens, sports which is likely to be least frequented by children and senior citizen.

(iii) designated feeder shall ensure that there is no littering at the feeding location or violation of guidelines framed by the Resident Welfare Association or Apartment Owner Association or that areas. (iv) designated feeders are allowed to volunteer for the vaccination, catching and release of dogs to assist with the Animal Birth Control Program.

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7. Learned Counsel for the petitioner has placed reliance on the decision of the coordinate Bench of this Court in the case **“Sharmila Sankar & Ors. Vs. Union of India & Ors.”**¹. In such case,

¹ Writ Petition No.9513 of 2021 decided on 20 March 2023

the Division Bench referring to Clause 20 of the 2023 Rules has held that the society in question in the said proceedings would fall within the definition of “Apartment Owner Association” and would be required to comply with the provisions of sub-clauses (i) to (iv) of sub-clause 1 of Clause 20 of providing feeding spots and defining of food spots for community animals i.e. the stray dogs. The Division Bench has also observed that there are constitutional safeguards even for non-humans. In such context the Division Bench referring to the decision of the Supreme Court in *Animal Welfare Board of India Vs. A. Nagraja & Ors.*² has observed that every species has an inherent right to live and protection under law.

8. We are thus of the clear opinion that the mandate of the Rules need to be strictly adhered by the Society so that the rights of these animals are recognized and they are not subjected to any cruelty, and appropriate steps are taken to provide the stray dogs of their basic needs of food and water, as also permit the persons like the petitioner to take care of their health issues.

2 (2014)7 SCC 547

9. For what has been argued before us, it cannot be the stand of the Society that the members of either the managing committee or the members of the society conduct themselves contrary to what has been provided under the '2023 Rules'. Certainly there is a need to designate feed spots as Rule 21(i) and (ii) would contemplate. This apart, there cannot be any impediment or any restraint caused by the society, much less by using any coercive methods by appointing bouncers so as to discourage or to prevent the petitioner or any animal lover from taking care of the stray animals. It is difficult for us to believe that in the present case bouncers could be appointed for such purposes.

10. In our opinion, considering the object and intention of the statutory Rules read with all the provisions of Prevention of Cruelty to Animals Act, 1960, it would be an obligation of all the members of the Society to follow the mandate of law and to prevent themselves from causing any cruelty and harassment to the animals, as also to those, who intend to take care for these animals. We, accordingly, expect that a sense of belonging and responsibility on

such issue needs to prevail between the members of the society so as to cordially resolve these issues, and no confrontation in this regard ought to happen. Also in the event if there is any fear or any inconvenience or danger from any of the stray dogs, being caused to children, senior citizens and/or the members of the society, it is appropriate that proper measures in that regard in consultation with experts, animal lovers, NGOs and the municipal officers can be discussed and implemented.

11. Accordingly as requested by the learned Counsel for the Respondent/Society, we adjourn the petition to **28th March, 2023 (First on Board)**, to take instructions on the issues, we have noted above. Respondent/Society shall inform the Court of the designated place as also welfare measures, the Society would now consider, to help and pursue the cause of these animals, so that the animals are cared and their rights protected in the spirit in which the law would mandate.

12. We also intend to sound a word of caution to the members of the managing committee and the other members of the society

that to hate the stray dogs and/or treat them with cruelty can never be an acceptable approach, from persons of civil society, as an act of cruelty to such animals would be against the Constitutional ethos and the statutory provisions.

13. If the Society continues to take any coercive measures as noted by us above and by physical force, persons like the petitioner are prevented from taking care of these animals, and/or from pursuing such activity which is wholly permissible in law, such actions on their part would not only be contrary to the provisions of law, but also, amount to commission of an offence.

14. Stand over to **28th March, 2023.**

15. It is informed by the learned Counsel for the society that there is also a writ petition filed by the society. However, such proceedings are not before us, we are concerned with the present petition in which the municipal corporation is impleaded as a party.

[R.N.LADDHA, J.]

[G.S.KULKARNI, J.]